OLC 78-2002/7
10 JUL 1978

Pro Leg

MEMORANDUM FOR: Director of Central Intelligence

FROM: Frederick P. Hitz
Legislative Counsel

SUBJECT: Meeting with Senator Bayh, SSCI Chairman, Regarding Department of State Authorization Act, FY 79

1. Action Requested: None; for information only for your meeting with Senator Bayh on Tuesday, 11 July.

2. Background: On 28 June 1978, the Senate passed H.R. 12598 (formerly designated S. 3076), the Foreign Relations Authorization Act, FY 79, which primarily authorizes appropriations for the Department of State and related agencies for FY 1979. Two provisions in the bill have been and continue to be of particular concern to us; both were adopted without amendment on the Senate floor:

a. Section 119: Amending the Role of the Ambassador Legislation (22 U.S.C. 2680a); and

b. Section 501: Amending the so-called "Case-Zablocki Act" (1 U.S.C. 112b).

Also of concern is an unprinted floor amendment introduced on 28 June, the day of the Senate floor action on S. 3076, by Senator McGovern. This amendment, subsequently adopted by the Senate, would amend Subsection 15(b) of the basic Department of State enabling legislation (Pub. L. No. 84-885 Subsection 15(b), 70 Stat 890, as amended (1956)), to require Federal agencies and departments with information within the jurisdiction of the Foreign Relations and International Relations Committees to provide that information regardless of the "third agency rule."

Note: There are other provisions in the legislation that are problematic, but these are the three most important problematic provisions.

TRANSMITTAL SLIP | DATE: 12 July 1978

TO: Mr. Hitz, Legislative Counsel

ROOM NO. | BUILDING

REMARKS:

Att: Nancy

FROM: DDCI

ROOM NO. | BUILDING | EXTENSION

FORM NO. 241 1 FEB 55 — REPLACES FORM 36-8 WHICH MAY BE USED. (47)

TRANSMITTAL SLIP | DATE: 10 July 78

TO: DDCI

ROOM NO. | BUILDING

REMARKS:

Fred Hitz — on the [illegible] offer [illegible] I think [illegible] to talk to him about a position. I know him well. His [illegible]

12 JUL 1978

FROM: OIC

ROOM NO. 7D35 | BUILDING Hqs.

FORM NO. 241 1 FEB 55 — REPLACES FORM 36-8 WHICH MAY BE USED.

STAT

The House passed H.R. 12598 on 31 May 1978. The House version did not contain provisions, as did the Senate bill, relating to the Role of the Ambassador legislation, the Case-Zablocki Act or the subsection 15(b) amendment. Both Houses have appointed conferees on H.R. 12598; the conferees are likely to meet shortly after the Congress reconvenes on Monday, 10 July 1978.

a. For the Senate the conferees are all members of the Foreign Relations Committee:

John Sparkman (D., Ala.)
Clifford Case (R., N. J.)*
George McGovern (D., S. D.)
Joseph Biden (D., Del.)*
Claiborne Pell (D., R. I.)
Charles Percy (R., Ill.)
Howard Baker (R., Tenn.)*

It should be noted that Senators McGovern and Biden have been particularly active on the Role of the Ambassador matter; Senator Case can be expected to resist interpretations of or changes to the Case-Zablocki Act that could be construed as narrowing the scope of the statute or the proposed amendments.

b. For the House the conferees are all members of the International Relations Committee:

Clement Zablocki (D., Wis.)**
Dante Fascell (D., Fla.)
Charles Diggs (D., Mich.)
Lester Wolff (D., N. Y.)
Leo Ryan (D., Calif.)
Helen Meyner (D., N. J.)
George Danielson (D., Calif.)
William Broomfield (R., Mich.)
John Buchanan (R., Ala.)
J. Herbert Burke (R., Fla.)

Prior to passage of the Senate version, we worked closely with State Department and OMB attempting to reach a coordinated Administration position. The most we were able to accomplish in this regard was to have opposition to certain provisions in section 501 of the Senate bill included in a State Department letter to Chairman Sparkman from Douglas J. Bennet, Assistant Secretary for Congressional Relations; these compromise positions included lukewarm opposition to the oral agreements provisions.

*Member of SSCI
**Member of HPSCI

Based on our efforts and your earlier talks with OMB Director McIntyre, we succeeded in convincing OMB that the Role of the Ambassador amendment was counterproductive and should be opposed. Unfortunately, OMB working level officers did not get the word until too late to include Administration opposition in the State Department's letter from Assistant Secretary Bennet setting forth the Administration position. We were able to get OMB suggested language constituting Administration opposition to the Role of the Ambassador amendment to Assistant Secretary Bennet during the floor debate, who in turn passed it to Senator McGovern on the floor, with no apparent effect.

Senator Goldwater, however, raised the matter of section 119--Role of the Ambassador Legislation Amendment--on the Senate floor. He noted the Intelligence Community was concerned about this provision, particularly since there had been no hearings on it. In response, Senator McGovern introduced for the record a letter to him from Senator Bayh, dated 27 June 1978, stating what purports to be the SSCI's views of section 119--essentially, that it is in accord with the recommendations of the Church Committee and in effect that it is not objectionable. Senator Goldwater did obtain Senator McGovern's commitment to consider section 119 at conference and look into any unnecessary questions related thereto (see pages S10019-20 of the debate in the Record, attached at Tab A).

Since passage, OMB Director McIntyre has reconfirmed that he strongly supports our position with regard to section 119. The State Department, however, has signaled their intent to argue in favor of the amendatory provision and thus oppose our attempts to have the amendatory language deleted.

We have provided our views to the SSCI in the form of a letter from Deputy Director Carlucci to Chairman Bayh (Tab B). However, it must be kept in mind that Bill Miller, SSCI Staff Director, does not agree with our positions on the amendments to the Role of the Ambassador legislation and the Case-Zablocki Act (i.e., his view is that the amendments would not really change the existing situations with respect to these laws and that clarifying legislative history to that effect is all we need). Our rebuttal to Bill Miller's views is contained in the attached talking points papers (Tabs C and D).

Since subsection 15(b), the "third agency rule" problem, was unprinted and introduced during the floor debate, we had no lead time to react. It is therefore most important that you raise this matter with Senator Bayh to register our concern. A talking points paper on this topic is provided for you at Tab E.

3. Staff Position: OLC and OGC believe that the Role of the Ambassador, the Case-Zablocki Act, and the "third agency rule" amendments, for the reasons outlined in the attached talking points papers (Tabs C, D, and E respectively), should be deleted.

4. Recommendtion: You should raise our concerns (as outlined in the attachements hereto) with these three provisions in your discussion with Senator Bayh.

Note: We intend to have our views reflected in an Administration views letter on H.R. 12598 for the conferees as well as approach individual conferees to raise our concerns. Our own views letters signed by Deputy Director Carlucci have been forwarded to the Chairmen of the House International Relations Committee and Senate Foreign Relations Committee (Tab F).

SIGNED

Frederick P. Hitz

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Fifth, and lastly, Mr. [illegible] I want to keep this brief, there is absolutely no justification for this amendment. The committee report offers the rationale of oversight of the radios. However, the radios themselves have numerous managerial personnel and I am far from persuaded that we need to stack yet another layer upon an organizational problem that is yet to be resolved.

It is for these compelling reasons that I ask my colleagues to join myself and Senator BYRD in striking this provision.

Mr. President, I have cleared this proposal on both sides of the aisle, and believe it is acceptable and will not require a record vote.

Mr. McGOVERN. Mr. President, I think the points made by the Senator from Ohio make sense, and I have no objection to his amendment.

The real purpose of the provision he seeks to strike is not to create any new positions in the Agency, but to make possible three or four promotions that we thought were in order. But the Senator does make the point that it was not examined in depth by the full committee, and under the circumstances I would not oppose the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Ohio.

The amendment was agreed to.

Mr. GOLDWATER. Mr. President, if the floor leader of the bill will give me his attention, I wish to ask for a clarification.

On page 16, lines 1 through 4 read as follows:

By inserting after the words "in a country shall" in the third paragraph thereof a comma and the following: "notwithstanding any other provision of law,".

I wanted to inquire of the floor manager whether any hearings were held on this particular part of the bill. I will refer to page 17 of the report and the top of page 18. There they explain what it does. What it does, frankly, is to require the intelligence community to give any information to the chief of mission, or whatever he is going to be called, and I would assume that to mean his staff.

Mr. McGOVERN. First, to answer the Senator's question as to whether hearings were held on this particular provision, the answer is no. Now the reason for that is that all this language does is to clarify an existing provision of the law. There is nothing that is added here which goes beyond existing law, except to clarify what the Congress has intended all along.

Mr. GOLDWATER. It is the National Security Act of 1947 under which the Director of Central Intelligence is prohibited from disclosing sensitive intelligence information unless authorized by law.

I just found out about this a few moments ago when the intelligence community called me. They are very exercised about this, particularly because there were no hearings held. By merely alluding to a report made by the Church committee, of which I was a member, I do not think is enough background to warrant our passing this legislation with this provision in it without hearing from the intelligence agencies.

[illegible] ator's mind, that the Ambassador or chief of mission should be privy to information, but this is not always so. The law recognizes that there might be covert actions under the direction of the President that should not be disclosed unless the President specifically asks that they be disclosed.

Mr. McGOVERN. I will say to the Senator that it is my understanding that under the existing law the Central Intelligence Agency, and other intelligence agencies, are obligated to keep the Ambassador informed of their activities. This language simply underscores that fact.

I might say I have a letter which I ask unanimous consent to have printed in the RECORD. It is from Senator BAYH, the chairman of the Select Committee on Intelligence, and dated June 27, 1978. I will read the final paragraph. It was in response to an inquiry I made of the chairman of that committee as to whether or not this language was in compliance with their understanding of the current law. This is what he said:

This is my understanding of the current state of the law, and I believe it comports fully with the recommendations of the Church committee and the views of the Select Committee on Intelligence. It would appear to me that section 119 of S. 3076—

Which is what we are talking about here—

does no more than to affirm this interpretation, removing any ambiguities or uncertainties that may be thought to exist.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, D.C.,
June 27, 1978.

Hon. GEORGE McGOVERN,
Chairman, Subcommittee on International Operations, Committee on Foreign Relations, Washington, D.C.

DEAR GEORGE: This is in response to your letter requesting my comments on the desirability of section 119 of S. 3076, a provision relating to the authority and responsibility of U.S. chiefs of mission.

The Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the Church Committee), predecessor to the current Select Committee on Intelligence, considered the question of the proper relationship between ambassadors and U.S. intelligence agencies, and the effect of the so-called "Role of the Ambassador Legislation" (22 U.S.C. 2680a) on that relationship. It was the recommendation of that Committee (Final Report, Book I, p. 468) that the Executive branch issue instructions pursuant to 22 U.S.C. 2680a making "clear that Ambassadors are authorized recipients of sources and methods information concerning all intelligence activities . . ." The Committee further recommended that ambassadors "have the personal right, which may not be delegated, of access to the operational communications of the CIA's Clandestine Service in the country to which they are assigned. Any exceptions should have Presidential approval and should be brought to the attention of the intelligence oversight committee(s) of Congress." I believe that the Select Committee on Intelligence would continue to support these recommendations.

I do not believe that these recommendations are in any respect inconsistent with the statutory responsibility of the DCI for protecting intelligence sources and methods from un[illegible] [illegible] Security Act of 1947, 50 U.S.C. 403(d)(3)). The statutory responsibility of the DCI extends only to *unauthorized* disclosure. If ambassadors are authorized recipients of sources and methods information, disclosure of such information to them cannot be said to be inconsistent with the DCI's statutory responsibility. I believe it implicit in the recommendations of the Church Committee that, at least after the enactment of 22 U.S.C. 2680a, ambassadors should be considered authorized recipients of sources and methods information for purposes of 50 U.S.C. 403(d)(3). Because the authority of ambassadors under 22 U.S.C. 2680a is "[u]nder the direction of the President", however, it would seem clear that the President, if he did so expressly, could make exceptions to the ambassadors' right of access to such information.

This is my understanding of the current state of the law, and I believe it comports fully with the recommendations of the Church Committee and the views of the Select Committee on Intelligence. It would appear to me that section 119 of S. 3076 does no more than to affirm this interpretation, removing any ambiguities or uncertainties that may be thought to exist.

I hope these views are of assistance to you.

Sincerely yours,

BIRCH BAYH,
Chairman.

Mr. McGOVERN. That is also true of the State Department.

The Senator is correct, that there has not been any testimony, so far as I know, by the Central Intelligence Agency.

For whatever my assurance is worth, this particular part of the bill was simply designed to underscore existing law to clear up any ambiguities in the law under which the Ambassador has a right to know what activities are being carried on by any of our intelligence agencies in the country to which he has been assigned.

Mr. GOLDWATER. I am inclined to agree with the basis of that thinking, but I do know as a member of the Intelligence Committee that the intelligence community is concerned about this, because there were no hearings. They do not know just what we are talking about in this legislation as to how far the information is to go, if it is to be made available to any member of the staff of the chief of misison staff who may not be cleared for top secret or have a "Q" clearance. That is why I raised the question.

I have an amendment to strike it. I do not particularly want to go through that exercise. I think we can straighten it out in conference.

The law says that the Director of Intelligence is prohibited from disclosing sensitive intelligence information unless authorized by the law. Merely by inserting "notwithstanding any other provisions of law," it seems to me that the committee is trying to strike the law, not clarify it.

Mr. McGOVERN. I say to the Senator that the reason for this is that existing law states that the Ambassador is entitled to be kept informed of the activities being carried on in the country to which he is assigned.

I am not certain just why there should be confusion, but there has been some confusion expressed by the intelligence agencies as to whether they have [illegible]on with the Am-

bassador. The purpose of the provision is really simply to clear up that ambiguity.

Let me remind the Senator again that the Church committee and now the chairman of the Senate Select Committee on Intelligence says that that is their understanding, and it is also the understanding of the State Department. If, in fact, there is some question in the mind of the Central Intelligence Agency on this matter as to whether the reporting requirement extends beyond the ambassador, I would say to the Senator we can clear that up in conference without going into it here today.

Mr. GOLDWATER. I believe we should insert that the law does say that they are prohibited from offering this information. I think under certain conditions the ambassador is always able to get everything. What is in their mind is how far now does this information go, or the asking for this information. As I said, I did not know this language was in the law until about a half hour ago when the CIA called me. I talked to the chairman, Mr. BAYH, who unfortunately had to leave. He told me that he did share my feelings on this. I have an amendment at the desk but I am not going to offer it. I merely wanted this discussion in the RECORD so that when we go to conference, if the House wants to have an argument and we want to argue back at least we have made some points. I have not had the chance to sit down and visit with the CIA. I merely received the call.

Mr. McGOVERN. I appreciate the concern of the Senator. I assure him that I will personally make sure that the matter is gone into carefully in conference. If there are matters that we have not fully considered, there will be ample opportunity to do that in conference.

Mr. GOLDWATER. I thank the Senator.

UP AMENDMENT NO. 1376

(Purpose: To express the sense of the Congress with respect to Uganda)

Mr. DOLE. Mr. President, I send an amendment to the desk for myself and Senators McGOVERN, HELMS, THURMOND, and BROOKE, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE), for himself, Mr. McGOVERN, Mr. HELMS, Mr. THURMOND, and Mr. BROOKE, proposes an unprinted amendment numbered 1376.

The legislative clerk proceeded to read the amendment.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER (Mr. METZENBAUM). The Chair, in his capacity as a Senator from Ohio, objects. The Clerk will continue reading the amendment.

The legislative clerk concluded reading the amendment, which is as follows:

On page 56, between lines 20 and 21, insert the following:

(d) It is the sense of the Senate that the President should—

(1) prohibit the export of military, paramilitary, and police equipment to Uganda;

(2) declare that the appropriate consular officer may not approve any visa application of any official or employee of the Government of Uganda for the purpose of military, paramilitary, and police training within the United States without the review of the appropriate official of the Department of State in Washington to determine that the Government of Uganda has demonstrated a proper respect for the rule of law and for internationally recognized human rights; and

(3) instruct the permanent representative of the United States to the United Nations to submit to the United Nations General Assembly for its consideration a resolution imposing a mandatory arms embargo on Uganda by all members of the United Nations.

The PRESIDING OFFICER. Will the Senator from Kansas apprise the Chair as to whether or not this is one of the three amendments to which there was a 30-minute time limit?

Mr. DOLE. Yes.

The PRESIDING OFFICER. I thank the Senator from Kansas.

Mr. DOLE. Mr. President, I think those who heard the reading of the amendment know that it is self-explanatory.

Last November the State Department confirmed that several dozen Ugandan Government officials were in the United States for training programs with private organizations. At least a dozen of these were enrolled in a training course for helicopter pilots run by an American helicopter company located in Texas. According to the report, the Ugandans were Government employees training to pilot police helicopters.

There are two disturbing elements to this matter. First, the present Government of Uganda is notorious for its brutal and barbaric treatment of those individuals whom it perceives as political opponents. Both public and private executions have become the standard means for dealing with political opposition since Idi Amin came to power in January of 1971. Both Ugandans and non-Ugandans have suffered the wrath of this capricious dictator. Americans have been jolted by the uneasy feeling that training programs within our own country may be directly assisting in the brutal repression that has terrorized Uganda.

Second, it is particularly disturbing to me, as I know it is to many of my colleagues, that entrance visas for the Ugandan Government officials were approved without the knowledge of State Department officials in Washington. It seems that visas for foreign government employees traveling in this country for official purposes have been routinely handled by U.S. Consular employees in our embassies abroad. Although the State Department says that it has since "tightened up" its visa procedures for Ugandans, future policies in this regard seem uncertain at best.

For that reason I have introduced an amendment which would clearly express the sense of the Senate with respect to the handling fo visa applications submitted by Ugandan government officials in the future. In addition, it calls for a mandatory embargo on the export of all American military police and paramilitary equipment to Uganda, and it urges the U.S. Ambassador to the United Nations to present a resolution for consideration imposing a mandatory arms embargo on Uganda by all members of the United Nations. This would, of course, parallel similar action taken by the U.N. Security Council last fall.

UGANDAN ATROCITIES

Within the past several years, the world has become sadly aware of the unspeakable horrors of the Amin regime in Uganda. The rule of law in Uganda is nonexistent, and financial mismanagement is widespread. Idi Amin has declared himself "President for life" and has undertaken a bloody campaign to eliminate all potential opposition to his totalitarian government. The official intelligence network within the country constitutes a continuous form of harassment and intimidation for Ugandans in all walks of life.

Estimates of the number of Ugandan citizens who have been mercilessly killed since Amin came to power vary, but Amnesty International reports that between 30,000 and 300,000 Ugandans have fallen victim to this reign of terror.

In addition, we know that American businessmen and church leaders residing in Uganda have been harassed and intimidated unmercifully. Discrimination against Christians and Jews has occurred regularly. For a few days in February of last year, Amin forbade Americans living in Uganda from leaving the country. A concerted international protest fortunately led to a rescission of that order.

In search of a source of diplomatic and military support, Idi Amin has turned to the Soviet Union for the purchase of fighter aircraft and tanks, as well as Soviet instructors to accompany them. Amin's closest friends on the international scene are the leaders of Cuba and Libya, both international outlaws in their own right. Newspapers in neighboring Kenya have reported that large numbers of Cubans are entering Uganda, and Libya is providing Uganda with economic aid. It will not come as a surprise to many that the brutal Ugandan regime displays a definite pro-Marxist tendency in its foreign relations.

Mr. President, there are those who shrug their shoulders helplessly and say that there is little we can do to improve the barbaric situations that we know exist in nations such as Cambodia and Uganda today, but I do not subscribe to the theory that our limited capacities necessitate hopeless resignation on our part. I believe that the U.S. Government has a responsibility to speak out, and to continue to speak out against such brutal regimes, and to attempt to focus world attention on their gross violations of basic human rights.

In many cases, our action may be termed "symbolic" or "moralistic." In some cases, when we move to deny technical and military assistance to Uganda, others may fill the void. But I, for one, believe that moral principle and consistency of policy argue for such action in any case. Indeed, I believe the national interest is best served by a policy that encourages the isolation of repres-

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Central Intelligence Agency

Chrono

Washington, D.C. 20505

1 JUN 1978

Honorable Birch Bayh, Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We have been in contact with your Committee Staff Director, Mr. William Miller, to discuss our concerns with certain provisions in S. 3076, the "Foreign Relations Authorization Act, Fiscal Year 1979," which recently was ordered reported by the Foreign Relations Committee. Mr. Miller has requested that we submit the Director's views formally to your Committee.

Our concerns relate to section 119 of S. 3076, which would amend the so-called "Role of the Ambassador Legislation" (22 U.S.C. 2680a), and to Title V of S. 3076, which would amend the so-called "Case/Zablocki Act" (1 U.S.C. 112b).

Section 119 of the Senate bill, concerning the Role of the Ambassador Legislation, would amend 22 U.S.C. 2680a by adding the following language to paragraph (3) between the words "country" and "shall": "notwithstanding any other provision of law." This amendment is of concern to us because of its potential construction as superseding the statutory authority of the Director of Central Intelligence to protect intelligence sources and methods against unauthorized disclosure (section 102(d)(3) of the National Security Act of 1947, as amended, 50 U.S.C. 403).

The amendment in section 119 would leave intact the present prefatory language to 22 U.S.C. 2680a: "Under the direction of the President--" In our view, this language provides the appropriate statutory formula reflecting the respective responsibilities, in terms of our interests for example, of the Director of Central Intelligence and the Secretary of State. Addition of the phrase "notwithstanding any other provision of law" could be construed as a statutory supersession of the Director's authority cited above. In our view, this is both unnecessary and inappropriate, and we would oppose inclusion of this language in the legislation.

Sections 501 and 502 of S. 3076, concerning the determination and reporting of "international agreements" pursuant to the Case/Zablocki Act, would, among other things, amend 1 U.S.C. 112b by providing as follows:

1. Oral agreements would have to be reduced to writing and thereafter reported to the Congress if determined to be "international agreements."

2. No "international agreement" (including intelligence agreements) could be signed or concluded without the prior approval of the Secretary of State or the President.

3. The Secretary of State is expressly granted the power to determine, for the Executive Branch, what arrangements constitute "international agreements."

4. Rules and regulations necessary to carry out the Case/Zablocki Act shall be issued by the President, through the Secretary of State.

In our view, extending the Case/Zablocki Act to cover oral agreements is not consistent with what we understand the purpose of the Act to be; namely, that the Executive keep the Congress informed of all significant agreements with foreign governments having a binding effect on the United States. A statutory requirement concerning oral agreements could pose a serious practical burden in terms of what should be "reduced to writing" and in what terms; the numbers of such matters could be extremely large.

More significantly, the provisions in section 501 of S. 3076 that relate to oral agreements could have a serious negative impact on intelligence activities conducted pursuant to the Director's authority which may involve, for example, liaison relationships with foreign counterparts. This impact could extend not only to the Director's ability to protect sensitive intelligence information from disclosure, but to our ability in the first instance to maintain certain authorized intelligence relationships, which are dependent on the willingness of foreign entities to deal with us. For these reasons, we would oppose inclusion in legislation of the provisions in section 501 of S. 3076 relating to oral agreements.

We are also concerned with those provisions in section 501 regarding prior approval of agreements by the Secretary of State or the President. As to intelligence matters conducted pursuant to the authority of the Director, requiring the approval of the Secretary of State is inappropriate. The alternative of placing the burden on the President for reviewing and approving intelligence activities that are conducted by CIA which, in the first instance is under the National Security Council, of which the President is a member (50 U.S.C. 402-403), is at once unnecessary and inappropriate in statute. We believe this provision in section 501 should be deleted.

Finally as to section 501 of S. 3076, in our view the provision requiring that the President issue rules and regulations to implement 1 U.S.C. 112b inappropriately specifies that this shall be done "through the Secretary of State." This additional provision is unnecessary and could confuse the ultimate responsibility of the President to issue the relevant rules and regulations, in consultation with, or as delegated to, those of his officers as he deems appropriate, not necessarily limited to the Secretary of State. Agencies and departments other than the Department of State are affected by, or conduct activities that are required to be reported under, the Case/Zablocki Act. We therefore recommend deletion of the words "... through the Secretary of State..." from proposed subsection (d) in section 501 of S. 3076.

The companion bill in the House, H.R. 12598, as reported by the International Relations Committee, does not contain provisions as discussed above in S. 3076. We would like to bring to your attention, however, a concern we do have with Title V of H.R. 12598. The scope of this title, "Science, Technology, and American Diplomacy," in our view is unclear, both as to what constitute "science or technology" activities, agreements, or initiatives and as to the responsibilities therefor of respective Federal agencies and departments, including the Department of State. We fail to see the need for such legislation. Although the Committee on International Relations report contains some language to the effect that Title V of H.R. 12598 is not intended to affect intelligence activities--which is consistent with understandings conveyed to us as to the scope of the legislation--we believe the bill itself should be amended to include provisions to this effect. H.R. 12598, as reported by the International Relations Committee, also contains language protecting against public disclosure any information relating to intelligence sources and methods that might be related to reporting on science and technology matters under the bill. We support this provision.

I bring these matters to your attention with a request that you review them pursuant to the Committee's legislative oversight responsibility. Time has not permitted securing the advice of the Office of Management and Budget as to the relationship of this report to the Administrations programs, although we have conveyed a report to OMB and are discussing these matters with that Office. We would welcome the opportunity to discuss the concerns raised in this letter with your Committee in an effort to ensure that the Agency's equities are not adversely affected by the legislation.

Sincerely,

Frank Carlucci

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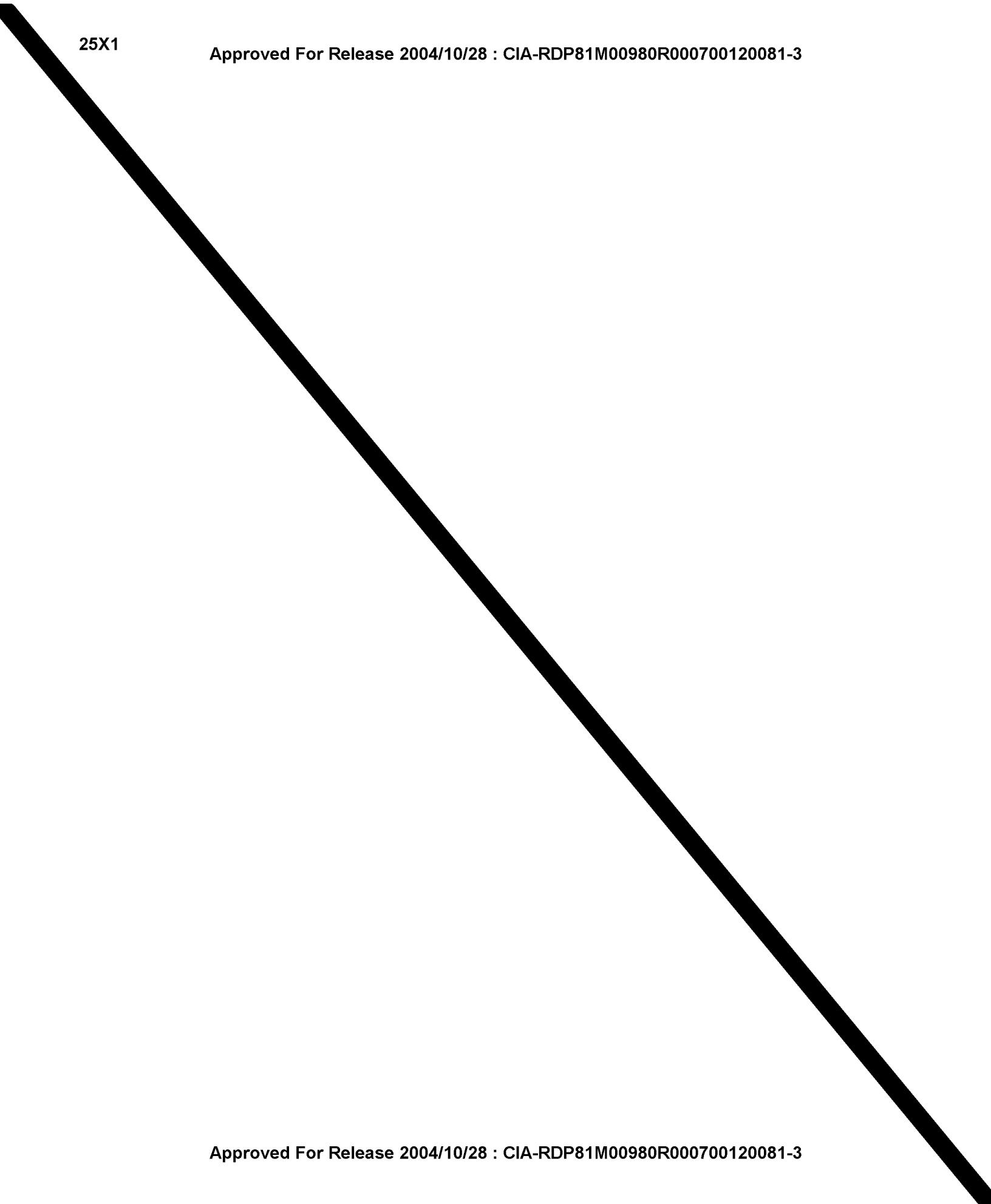

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Section 119. Authority and Responsibility of the United States Chiefs of Missions.

Note: Section 119 of the S. 3076 would amend Section 16 of the act entitled "An act to provide certain basic authority for the Department of State" (Pub. L. No. 84-885, Subsection 15 (b), 70 Stat. 890, as amended (1956), 20 U.S.C. 2680a.) to read as follows:

"Under the direction of the President -

(3) any department or agency having officers or employees in a country shall, notwithstanding any other provision of law, keep the United States Ambassador to that country fully and currently informed with respect to all activities and operations of its officers and employees in that country, and shall ensure that all of its officers and employees, except for personnel under the command of a United State area military commander, comply fully with all applicable directives of the Ambassador."

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TALKING POINTS PAPER RE CASE-ZABLOCKI ACT AMENDMENTS

Section 501 of H.R. 12598 concerns the determination and reporting of "international agreements" pursuant to the so-called "Case-Zablocki Act" (1 U.S.C. 112b). Among other things, section 501 would amend 1 U.S.C. 112b by providing as follows:

1. Oral agreements would have to be reduced to writing and thereafter reported to the Congress if determined to be "international agreements."
2. No "international agreement" could be signed or concluded without the prior approval of the Secretary of State or the President.
3. Rules and regulations necessary to carry out the Case-Zablocki Act shall be issued by the President, through the Secretary of State.

The following points should be made in conversation with Senator Bayh:

--Not only is the inclusion of oral agreements in Section 501 inconsistent with the present law and procedures developed thereunder, but it would also prove to be unacceptably burdensome in practice and impossible to enforce. This problem would result from the difficulty inherent in determining what activities or arrangements must be reduced to writing, and from the fact that the number of such matters that would have to be so considered in order to determine whether they constitute international agreements would be extremely large.

--The oral agreements provision could have a serious negative impact on intelligence activities involving liaison relationships with foreign intelligence and security services. As a result of such a statutory provision, foreign intelligence and security services would almost certainly question the ability of the U.S. Government to securely maintain the terms of such authorized relationships and would reexamine their willingness to deal with the U.S.

--Insofar as concerns intelligence matters conducted pursuant to the authorities of the DCI, requiring prior approval of such agreements by the Secretary of State is inappropriate.

--Placing a statutory burden on the President for reviewing and approving intelligence activities conducted by the CIA which, in the first instance is under the NSC, of which the President is a member (50 U.S.C. 402-403), is unnecessary and inappropriate.

--It is also inappropriate that the President be burdened with a statutory requirement to report in detail and in writing annually to the Congress merely to inform the Congress that certain agreements were transmitted "late." (Subsection 501(b).)

--Subsection 501(d) inappropriately specifies that the President shall issue rules and regulations to implement 1 U.S.C 112b "through the Secretary of State." This provision is unnecessary and could lead to confusion as it is the ultimate responsibility of the President to issue the relevant rules and regulations in consultation with, those of his officers as he deems appropriate, not necessarily limited to the Secretary of State.

E.

TALKING POINTS PAPER ON SUBSECTION 15(b),
THIRD AGENCY RULE AMENDMENT

Senator McGovern proposed a number of amendments including one that would in effect require Federal agencies and departments with information within the jurisdiction of the Foreign Relations and International Relations Committees to provide that information regardless of the third agency rule; this amendment was adopted. The specific provision in the basic Department of State enabling legislation so amended would read as follows (new language underlined):

> SEC. 15(b). The Department of State shall keep the [Foreign Relations and International Relations Committees] ... fully and currently informed with respect to all activities and responsibilities within the jurisdiction of their Committees. Any Federal department, agency, or independent establishment shall furnish any information (notwithstanding the department, agency, or independent establishment of origin) requested by either such Committee relating to any such activities or responsibilities."

With regard to section 15(b) the following points should be made:

--The amendatory provision is unnecessary since it does not give the Committee any further right to information than they already possess.

--The provision may be counterproductive since it arguably may encourage some agencies to restrict State Department access to information, thereby inhibiting the Department's ability to fulfill other statutory requirements.

--This provision could arguably allow the Committees to require any Ambassador, as a State Department team member and as subject to confirmation by the Senate Committee, to testify or otherwise produce any information within the jurisdiction of the two Committees.

F

Washington, D.C. 20505

7 JUL 1978

Honorable John Sparkman, Chairman
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to express the concerns of this Agency with certain provisions of H.R. 12598, the "Foreign Relations Authorization Act, FY 79," which passed the House on 31 May 1978 and the Senate (Senate version formerly number S. 3076) on 28 June 1978. Both Houses have appointed conferees--for the Senate, all members of the Foreign Relations Committee--who are expected to meet shortly after the Congress reconvenes on Monday, 10 July 1978.

The Senate version (S. 3076) contains two provisions which have been and remain of particular concern to us; these were not amended at all on the floor: --Section 119, amending the Role of the Ambassador Legislation (22 U.S.C. 2680a); and, --Section 501, amending the so-called "Case-Zablocki Act" (1 U.S.C. 112b).

Section 119 of the Senate bill, concerning the Role of the Ambassador Legislation, would amend 22 U.S.C. 2680a by adding the following language to paragraph (3) between the words "country" and "shall": "notwithstanding any other provision of law." This amendment is of concern to us because of its potential construction as superseding the statutory authority of the Director of Central Intelligence to protect intelligence sources and methods against unauthorized disclosure (section 102(d)(3) of the National Security Act of 1947, as amended, 50 U.S.C. 403). Further, the proposed additional language could be viewed by liaison services and other intelligence sources as a further weakening of the Government's ability to limit dissemination of intelligence sources and methods.

The amendment in section 119 would leave intact the present prefatory language to 22 U.S.C. 2680: "Under the direction of the President--" In our view, this language provides the appropriate statutory formula reflecting the respective responsibilities, in terms of our interests for example, of the Director of Central Intelligence and the Secretary of State. Addition of the language "notwithstanding any other provision of law" could be construed as relegating the President's authority under 22 U.S.C. 2650a to a purely ministerial (i.e., non-discretionary) function. Such a construction, which is not unreasonable under the proposed language, in our view would pose serious problems.

Moreover, addition of the proposed language could be construed as a statutory supersession of the Director's authority cited above. In our view, this is both unnecessary and inappropriate, and we would oppose inclusion of this language in the legislation. This view is the Administration's position on this matter.

Section 501 and 502 of S. 3076, concerning the determination and reporting of "international agreements" pursuant to the Case/Zablocki Act, would, among other things, amend 1 U.S.C. 112b by providing as follows:

1. Oral agreements would have to be reduced to writing and thereafter reported to the Congress if determined to be "international agreements."

2. No "international agreement" (including intelligence agreements) could be signed or concluded without the prior approval of the Secretary of State or the President.

3. The Secretary of State is expressly granted the power to determine, for the Executive Branch, what arrangements constitute "international agreements."

4. Rules and regulations necessary to carry out the Case/Zablocki Act shall be issued by the President, through the Secretary of State.

In our view, a statutory requirement concerning oral agreements could pose a serious practical burden in terms of what should be "reduced to writing" and in what terms; the numbers of such matters could be extremely large. More significantly, in terms of intelligence equities, the provisions in section 501 of S. 3076 that relate to oral agreements could have a serious negative impact on intelligence activities conducted pursuant to the Director's authority which may involve, for example, liaison relationships with foreign counterparts. This impact could extend not only to the Director's ability to protect sensitive intelligence information from disclosure, but to our ability in the first instance to maintain certain authorized intelligence relationships, which are dependent on the willingness of foreign entities to deal with us. For these reasons, we would oppose inclusion in legislation of the provisions in H.R. 12598 relating to oral agreements. The Administration's position in opposition to this provision is contained also in a letter to you from Assistant Secretary of State Douglas Bennet, dated 27 June 1978.

We are also concerned with those provisions in section 501 regarding prior approval of agreements by the Secretary of State or the President. As to intelligence matters conducted pursuant to the authority of the Director, requiring the approval of the Secretary of State is inappropriate. The alternative of placing the burden on the President for reviewing and approving intelligence activities that are conducted by CIA which, in the first instance is under the National Security Council, of which the President is a member (50 U.S.C. 402-403), is at once unnecessary and inappropriate in statute. We believe this provision in section 501 should be deleted; we believe, however that the position, reflected in the 27 June 1978 letter from Assistant Secretary of State Douglas Bennet, that the provision be amended to require "consultation" rather than "prior approval," is an improvement over existing language.

Finally, as to section 501 of H.R. 12598 as passed by the Senate, in our view the provision requiring that the President issue rules and regulations to implement 1 U.S.C. 112b inappropriately specifies that this shall be done "through the Secretary of State." This additional provision is unnecessary and could confuse the ultimate responsibility of the President to issue the relevant rules and regulations, in consultation with, or as delegated to, those of his officers as he deems appropriate, not necessarily limited to the Secretary of State. Agencies and departments other than the Department of State are affected by, or conduct activities that are required to be reported under, the Case/Zablocki Act. We therefore recommend deletion of the words "... through the Secretary of State ..." from proposed subsection (d) in section 501 of S. 3076. Also, it is inappropriate, as provided in proposed subsection (b), that the President be burdened with a statutory requirement to report in detail and in writing annually to the Congress merely to inform the Congress that certain agreements were transmitted late.

The companion bill as passed by the House does not contain the provisions as discussed above. I would like to bring to your attention, however, a concern with regard to Title V of H.R. 12598 as passed by the House. Title V, entitled "Science, Technology, and American Diplomacy," includes provisions apparently designed to consolidate policy control of international activities involving science and technology under the Secretary of State.

Briefly, in our view, these provisions in Title V present problems because the underlying terminology--"science and technology" activities, initiatives and agreements--is not defined and, as a result, the provisions could be fairly construed as applying to activities involving intelligence activities conducted by the CIA concerning, for example, liaison activities with intelligence and internal security services of foreign governments insofar as such activities might involve "science or technology" matters. While we have no quarrel with the concept that national foreign intelligence activities should be fully consistent with foreign policy objectives, this legislation could be construed to require unnecessary proliferation of detailed information regarding intelligence relationships with foreign governments within the Executive Branch and the Congress.

Intelligence relationships with foreign governments, including relationships involving highly sophisticated and technologically advanced collection systems, are among the most sensitive of intelligence sources and methods, and proliferation of information concerning those relationships could not only jeopardize cooperation with respect to particular activities, but also jeopardize cooperation in general, and valuable intelligence could be lost.

It is our understanding that intelligence activities are not intended to fall within the terms of Title V. Although the report on this bill filed by the International Relations Committee contains language in the analysis of subsection 503(c) to this effect, we believe the report language fails to address fully our concerns that the scope of the title is not clear. Moreover, these provisions are troublesome generally in terms of their ambiguity and serious problems that would arise in attempting to implement them. For these reasons, we oppose enactment of the "Science and Technology" provisions in H.R. 12598.

I would like to address one other issue herein which deals with a floor amendment introduced by Senator McGovern during the Senate debate on the bill on 28 June. Senator McGovern proposed a number of amendments including one that would in effect require Federal agencies and departments with information within the jurisdiction of the Foreign Relations and International Relations Committees to provide that information regardless of the so-called "third agency rule"; this amendment was adopted. The specific provision in the basic Department of State enabling legislation so amended would read as follows (new language underlined):

> "SEC. 15(b). The Department of State shall keep the [Foreign Relations and International Relations Committees] ... fully and currently informed with respect to all activities and responsibilities within the jurisdiction of their Committees. Any Federal department, agency, or independent establishment shall furnish any information (notwithstanding the department, agency, or independent establishment of origin) requested by either such Committee relating to any such activities or responsibilities."

This floor amendment is problematic from two viewpoints. First, the amendatory provision is unnecessary since it does not give the committees any further right to information than they already possess. Secondly, the provision may be counterproductive since it arguably may encourage some agencies to restrict State Department access to information, thereby inhibiting the Department's ability to fulfill other statutory requirements. Accordingly, we would recommend that the 15(b) amendatory language be deleted.

I bring these matters to your attention with a request that the conferees review them pursuant to their responsibilities in conference. We would welcome the opportunity to discuss these matters with you in an effort to ensure that the Director's equities are not adversely affected by the legislation.

Sincerely,

SIGNED

Frank C. Carlucci

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